

[date]

[taxpayer address]

Re: Formal Ruling 17-07

Dear [taxpayer]:

This is a formal ruling for [taxpayer], regarding the applicability of sales and use tax to your charges for [product]. This ruling is based upon representations in your letter dated [date], received in this office [date], and the enclosed materials, and our telephone conversation of [date].

**FACTS**

Your company, [taxpayer] (Taxpayer), provides [product name] (“Online Product”) to your independent-contractor sales persons. The contractor “must access” the Online Product through a Website which you provide to your contractors, called the “[Website name].” At that [delated] Website, the contractor must click on a link to access the Online Product. Once accessed, the Online Product allows the contractor to create the contractor’s own personalized Website. Through the personalized Website, the contractor can receive and manage sales orders from the contractor’s customers, create a customer database, and use provided templates to write and email personalized business newsletters from the contractor to his or her customers. The

contractor's personalized Website provides connection to Taxpayer's Website and all of Taxpayer's product and sales information provided there.

The contractor does not receive a compact disk or other tangible form of software and does not download any software in order to access and use the Online Product or the customized contractor Website.

You charge your contractors a monthly fee for access to and use of your Online Product.

### **DISCUSSION**

You have asked for a ruling on whether your monthly charge to your contractors for access to your Online Product is subject to sales tax.

Vermont imposes a tax on retail sales of "tangible personal property." 32 V.S.A. 9771(1). A "retail sale" includes "any sale, lease, or rental." 32 V.S.A. § 9701(5). A "lease or rental" means "any transfer of possession or control of tangible personal property for a fixed or indeterminate term." Vermont Department of Taxes Regulations ("Reg.") § 1.9701(5)-2.

"Tangible personal property" includes "prewritten computer software." 32 V.S.A. § 9701(7). Until July 1, 2015, Vermont imposed sales tax on sales of "prewritten software . . . even if delivered electronically." Reg. § 1.9701(7)-1. As of July 1, 2015, prewritten software is not taxable if sold for "access remotely." Sec. G.8 of No. 51 of the Acts of the General Assembly of 2015.

Because the contractor does not receive any tangible version of software and does not download any software in order to access and use the Online Product or the customized contractor Website, any prewritten software involved is accessed remotely. As a result, your charges to the contractors are not subject to sales tax.

**GENERAL PROVISIONS**

*Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.*

*Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.*

*This ruling will be made public after deletion of the taxpayer's name and any information which may identify the taxpayer. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the taxpayer. The final discretion as to deletions rests with the Commissioner.*

*You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.*

\_\_\_\_\_  
Emily Bergquist

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Kaj Samsom  
Commissioner of Taxes

\_\_\_\_\_  
Date